IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Criminal Application No.1263/2007

Nandkishor S/o Rambhau Choudhary,
aged about 40 years,
Occupation Business (Estate Broker)
R/o Katol,
District – Nagpur. **APPLICANT**

VERSUS

1.Balabhau S/o Ramchandraji Ganorkar,
aged about 62 years,
Occupation Agriculturist,
R/o Warud, Tq. Warud,
Distt. Amravati.

2.The State of Maharashtra **RESPONDENTS**

.....

Mr. H.D. Dubey, Advocate for the applicant.
Mr. V.M. Deshpande, Advocate for the respondent no.1.
Mrs. Joshi, A.P.P. for the respondent no.2.

.....

CORAM: A.P. LAVANDE, J.
DATED : 11/6/2007.

ORAL JUDGMENT :

1. Heard Mr. Dubey, learned counsel for the applicant and

Mr. Deshpande, learned counsel for the respondent no.1 and Mrs. Joshi, learned A.P.P. for the respondent no.2.

2. Rule. By consent heard forthwith.

3. By this application, under Section 482 of the Code of Criminal Procedure, the applicant who is original accused in Summary Criminal Complaint Case No.369/2006 challenges the order dated 13.3.2007 passed by the Adhoc Additional Sessions Judge, Amravati by which learned Adhoc Additional Sessions Judge has suspended the substantive sentence of imprisonment imposed on the applicant for offence punishable under Section 138 of the Negotiable Instruments Act (for short “the Act”) upon the applicant executing bail bond in the sum of Rs. 15,000/- with one surety in the like amount and depositing the amount of Rs.55,000/- within one month. This Court by order dated 30.4.2007 granted interim protection to the applicant.

4. Mr. Dubey, learned counsel for the applicant submits that learned Adhoc Additional Sessions Judge could not have imposed condition of deposit of part of the compensation as a condition for suspension of sentence and in any case the

impugned order directing the applicant to deposit the compensation amount of Rs.55,000/- is excessive and, therefore, the condition to deposit Rs. 55,000/- for suspension of sentence deserves to be quashed and set aside.

5. Per contra, Mr. Deshpande, learned counsel for respondent no.1 and Mrs. Joshi, learned A.P.P. for respondent no.2 submitted that no case is made out to interfere under Section 482 of the Code of Criminal Procedure against the impugned order.

6. Having considered the submissions advanced by the learned counsel and having perused the records, I find no merit in the present application. It is well settled that the lower appellate Court while suspending the sentence in a case under Section 138 of the Negotiable Instruments Act is entitled to direct the applicant-accused to deposit reasonable compensation. The learned Single Judge of this Court in Maheshwar Dattatraya Kale Vs. Capt. Atul Wasudeo Divekar and another (2006 (1) Mh.L.J. 700 has upheld the similar order passed by the lower Appellate Court. I do not find any merit in

the present application. By the impugned order the Adhoc Additional Sessions Judge has only directed the applicant to deposit 50% amount of compensation as a condition for suspension of sentence. There is absolutely no perversity or illegality in the impugned order. I, therefore, find no merit in the present application.

7. At this stage, Mr. Dubey, learned counsel for the applicant submits that this Court had granted stay of the condition of deposit on 30.4.2007 and therefore, time to deposit the amount of Rs. 55,000/- be extended by two months from today in the trial Court. The prayer is opposed by Mr. Deshpande, learned counsel for the respondent no.1-complainant.

8. Considering the facts and circumstances of the case and in the interest of justice, time to deposit the amount of Rs.55,000/- in terms of the impugned order is extended by eight weeks from today. It is made clear that in case the applicant does not deposit the amount of Rs. 55,000/- within eight weeks from today, learned Adhoc Additional Sessions Judge shall take

steps to take the accused-applicant in custody to serve the sentence imposed on him. In case the amount is deposited, learned Additional Sessions Judge, shall invest the amount in fixed deposit in any Nationalised Bank till the disposal of the appeal.

With these observations, the application stands disposed of with no order as to costs.

JUDGE